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December 15, 1988

Douglas L. Patch, Esquire
Assistant Commissioner
New Hampshire Department of Safety

Re: Rulemaking authority under RSA 21-P:14 IV(a)

Dear Assistant Commissioner Patch:

By memorandum dated November 29, 1988 you have requested our opinion as to whether RSA 21-P:14 IV(a) (Supp. 1988) empowers the Department of Safety (Department) to promulgate an administrative rule requiring persons applying for a New Hampshire driver's license to disclose their federal social security identification number. For the reasons set forth below it is our opinion that the Department has such authority.

BACKGROUND

The Department has filed proposed rules with the Joint Committee on Administrative Rules as required by RSA 541-A:3. One of the proposed rules would require a person applying for a driver's license to disclose his or her federal social security identification number to the Department. Federal law permits state motor vehicle departments to require such disclosure for the limited purpose of administering the motor vehicle laws or establishing the identification of individuals affected by



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licensing laws. See 42 U.S.C. §405(c)(2)(C)(i) & (iii).^{1/} The Department currently requests that persons applying for a driver's license voluntarily disclose their social security numbers to the Department.

Your memorandum does not state what administrative findings or policies have been identified in support of requiring the disclosure of persons' social security identification numbers to the Department. It seems reasonable to assume, however, that the use of such numbers promotes the rapid identification of persons and that such enhanced identification procedures will benefit public security and safety by reducing the time needed to identify persons and files, will promote effective enforcement of the motor vehicle and criminal laws, will improve the integration of public safety functions by strengthening standardized file keeping procedures and will improve the administrative efficiency of the Department's programs by making it easier for data to be filed and retrieved.^{2/}

RSA 21-P:14, II does not expressly allow the Department to promulgate a rule relating to the disclosure of social security identification numbers. The issue to be decided, therefore, is whether the proposed rule is consistent with the Department's general enabling legislation and grant of rulemaking authority.

^{1/} The statute provides, in relevant part: "It is the policy of the United States that any State . . . may, in the administration of any . . . driver's license or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law." 42 U.S.C.A. §405(c)(2)(C) (i). But see also Pub. L. 93-579 §7 (1974) (codified in note at 5 U.S.C. §552d).

^{2/} The Commissioner may wish to include a statement of these or similar policy reasons underlying the adoption of the rule, together with a statement on why those reasons outweigh any individual interest in not disclosing a social security identification number.

DISCUSSION

It is well settled that the legislature may delegate to administrative agencies the power to promulgate rules necessary for the proper execution of the laws. Opinion of the Justices, 121 N.H. 522 (1981). An agency's rulemaking authority allows it to fill in the details of the legislation that the agency administers in order to effectuate the purposes of that legislation. Id. Any delegation of rulemaking authority is not unlimited however, and is circumscribed by general legislative policies, standards embodied in the agency's enabling legislation, and the words of the grant of rulemaking power. See id. In promulgating rules an agency may not add to, detract from, or in any way modify statutory law. Id.

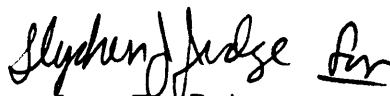
RSA 263:5 empowers the Department to prepare application blanks for persons seeking a driver's license. RSA 263:5 (1982). Although it does not expressly relate to social security identification numbers, RSA 21-P:14, the grant of rulemaking authority in the Department's enabling legislation, expressly authorizes the Department to adopt rules relating to "information required on driver's license applications." RSA 21-P:14 IV(a) (Supp. 1988). The proposed rule is consistent with this statute because the numbers are to be used for identification purposes. The underlying purposes of the enabling legislation are, inter alia, to promote the security and physical safety of the citizens, increase the integration of state public safety programs and promote the administrative efficiency of those programs. See RSA 21-P:1 (Supp. 1988). All of these purposes are consistent with the purposes of the proposed rule.

In promulgating a rule requiring persons to disclose their federal social security the Department has not added to, detracted from or modified the legislation that empowers it to prescribe the forms used to apply for a driver's license. The Department has simply specified in greater detail the information that must be furnished to it on application forms before it issues a driver's license. At this time we are unaware of any contrary authority limiting the Department's power to obtain such information. We therefore conclude that the proposed rule does not violate the Department's grant of rulemaking authority.

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I trust this is responsive to your inquiry. Please contact me if you have further questions regarding this matter or if there is any relevant information that I have overlooked.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles T. Putnam", with a stylized flourish at the end.

Charles T. Putnam
Assistant Attorney General

CTP/kab
O-88-061